



HARERA
GURUGRAM

Complaint No. 4122 of 2025

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no. : 4122 of 2025
First date of hearing : 01.10.2025
Date of decision : 16.12.2025

RISHI MEHRA

R/o - 46 RA, Tower 2, Le Prestige, Lohas Park Road,
Lohas Park, Tseung Kwan o, HongKong

Complainant

Versus

BURMAN GSC ESTATE PRIVATE LIMITED

R/o- 4TH Floor, Punjabi Bhawan, 10 Rouse Avenue,
New Delhi, Delhi, India - 110002

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Sh. Harshit Batra, (Advocates)
Sh. Vinay Yadav (Proxy counsel)

Complainant
Respondent

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details		
1.	Name of the project	The Spectrum Centre, Sector 82 A, Gurugram		
2.	Nature of the project	Commercial		
3.	RERA Registered/ registered	Registered vide Registration no. 222 of 2017 dated 18.09.2017		
4.	License no. and validity	135 of 2008 dated 28.06.2006		
5.	Unit no.	<table border="1"> <tr> <td>Old unit - 618, 6th floor admeasuring 893 sq. ft. [Page 37 of complaint]</td> <td>New Unit - 1619, 16th floor admeasuring 893 sq. ft. [Page 40 of complaint]</td> </tr> </table>	Old unit - 618, 6 th floor admeasuring 893 sq. ft. [Page 37 of complaint]	New Unit - 1619, 16 th floor admeasuring 893 sq. ft. [Page 40 of complaint]
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6.	Date of allotment of new unit no. 1619	Unit change vide letter dated 10.03.2023 with reference to addendum to builder buyer agreement. [Page 39 of complaint]		
7.	Date of Builder Buyer Agreement	05.11.2015 [Page 40 of complaint]		
8.	Addendum to BBA	Not on record 14.12.2016 [as alleged by complainant in pleadings of complaint and BBA date as per addendum agreement duly signed by both the parties at page 36 of complaint and as per pleadings of complainant at pg.8 of complaint]		
9.	Possession clause	09.03.2023 [Page 36 of complaint]		
		13. Possession and Holding Charges		



	<p>[Taken from BBA of another complaint bearing no. CR/3020/2025 titled as "Rajiv Agarwal and Punam Agarwal Vs. M/s Burman GSC Estate Private Limited" of same project.]</p>	<p>13.4... "the Developer proposes to offer of possession of the Serviced Apartment to the Allottee within a period of 45 (Forty Five) months from the date of execution of this Agreement("Commitment Period"). The Allottee further agrees and understands that the Developer shall additionally be entitled to a period of 180 (One Hundred Eighty) days ("Grace Period"). After expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Developer."</p>
10.	Due date of possession	<p>14.03.2021 [As per possession clause 45 months from date of Agreement i.e., 14.12.2016 come out to be 14.09.2020 plus grace period of 180 days]</p>
11.	Total sale consideration	<p>87,15,600/- [Page 37 of complaint]</p>
12.	Amount paid by the complainant	<p>Rs.90,47,788/- [Page 9 of complaint and page 41 of complaint]</p>
13.	Occupation certificate	<p>19.11.2024 [Page 78 of complaint]</p>
14.	Demand Notice	<p>05.11.2015 [Page 38 of complaint]</p>
15.	Virtual Possession	<p>Not on record</p>

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:
 - a. That the complainant is a law-abiding and peace-loving person who was lured by the shrewd gimmicks of the respondent and had invested hard-earned money into the project of the respondent relying on the various representations and warranties made by the respondent and its officials

with respect to the project's sanctioned plans, layouts, and delivery schedule.

- b. That relying on the representations, warranties, and assurances of the respondent and its directors, officials etc. that the respondent is a reputed developer and that it has the requisite skills and resources to execute, implement, develop, construct and complete the project in a timely and orderly manner within the committed and agreed timelines and also to further pool the various units in the project for effective and efficient leasing thereof so as to benefit the respective allottees, the complainant booked a unit no.618 on the sixth floor in serviced apartment block named as "The Spectrum" admeasuring 893 sq. ft. super area in the real estate development of the respondent, known under the name and style of "Gurgaon Spectrum Centre" at Sector 82A, Gurugram, Haryana ("Project"). The said unit was allotted to the allottee vide an allotment letter dated 05.11.2015. where it was maintained that the basic cost of the unit will be Rs.87,15,600/- excluding the taxes/GST.
- c. That the respondent, without even executing the builder buyer agreement, had already demanded more than 10% of the total sale consideration of the said Unit from the complainant which is a gross violation of the Section 13(1) of the Act which explicitly states that no builder shall be allowed to accept a sum more than ten percent of the total sale consideration of the apartment, plot or building as the case may be. The relevant portion of the said section is reiterated here under;

"13. (1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such

- person and register the said agreement for sale, under any law for the time being in force."*
- d. That the complainant, even before the execution of the builder buyer agreement, had paid a sum of Rs.21,41,479/- as per the demands raised by the respondent from time to time.
- e. That the respondent, after the letter of allotment dated and after a substantial delay, sent a pre-printed builder buyer agreement to the complainant, which the complainant was reluctant to sign, as the agreement contained many arbitrary and one-sided clauses to suit to the convenience of the respondent. However, the complainant after investing her hard-earned money and in apprehension of losing her already paid consideration against the total consideration, was coerced to sign the agreement on dotted lines with no option and opportunity to negotiate the terms and conditions and thus, the complainant signed the builder buyer agreement on 14.12.2016.
- f. That the one-sided terms and conditions as mentioned in the Agreement are reiterated herein for the perusal of the Authority:

Clause 7.3- The rate of interest levied on the Allottee for every delayed payment is @18%; however, for delay in handing over of possession, the Respondent is only offering Rs. 10/- per sq. ft. of the super area.

Clauses 13.7 and 16.2 - The Respondent is levying the condition precedent for execution of the Conveyance Deed like payment of holding charges and/ or any other charges, dues payable by the Allottees to the Developer till the date of taking over possession by the Rental Pool Entity on behalf of the Allottee and Execution of all documents like the Rental Pool Agreement.

Clause 16.6 - In case the Allottee wants to withdraw from the Rental Pool for any reason whatsoever, the Allottee is made to bear the consequences, like to pay to the Rental Pool Entity/ Developer a sum equivalent to the total sale consideration, damages, indexed to



inflation based on the difference between the WPI on the date of signing of the Agreement and the WPI on the date of the aforesaid breach by the Allottee as per pre-estimated damages.

Clause 21.1- Time has been made the essence for timely performance by the allottee; however, for the delay by the Respondent, time has not been made the essence

- g. That, along with the execution of a one-sided buyer's agreement, the respondent had also coerced the complainant into signing a one-sided and arbitrary rental pool agreement dated 14.12.2016 at the same time as signing the one-sided buyer's agreement dated 14.12.2016. Complainant did not have any option but to sign the same. That the rental pool agreement is highly one-sided and does not contain any start date or any minimum commitment amount to be paid to the complainant, at which her unit shall be further leased out or operated by the rental pool entity.
- h. That such action of the respondent clearly amounts to unfair trade practices, adopted by the respondent inasmuch as such unilateral and one-sided clauses favouring the builder are clearly arbitrary in the eyes of the law and are covered under the definition of 'unfair trade practice'. The Hon'ble Supreme Court, in recent judgements like NBCC (India) vs Shri Ram Trivedi (2021) 5 SCC 273 and Experion Developers Pvt. Ltd. vs Sushma Ashok Shiroor 2022 SCC Online SC 416, has opined that when the terms and conditions are such that it benefits the builders only and the flat purchasers have no other option but to comply such clauses, then such clauses are not binding as the clauses providing for exclusion of certain periods for calculating completion date/due date of possession as well as delay compensation should be reasonable and not one-sided. Furthermore, the court further held that the concerned authorities and fora are empowered to award statutory compensation as well as just and

reasonable compensation, and they are not constrained by the arbitrary clauses or the arbitrary rates prescribed in such one-sided agreements.

- i. That after the booking and even at the time of execution of the agreement, the respondent made false representations and gave false assurances and commitments with respect to the Project and the timely delivery of the said project to the complainant, knowing them to be false and incorrect and infact all of them proved to be false and incorrect. In-fact, from the very beginning, the respondent had a *malafide* intent, and various assurances and commitments were given on the false pretext, and there was no intent to honour such commitments on the part of the Respondent.
- j. That the complainant's dream of owning the said Unit and enjoying and reaping in, securing and deriving the benefits therefrom (both monetary and otherwise), as promised and contractually committed by the respondent, has been shattered by the respondent in a most unlawful and illegal manner. It is anticipated that the project was launched and bookings were accepted with the intention to cheat and harm the innocent buyers and dupe them as is the case of the respondent despite being part of the well-known business conglomerate and the respondent and its promoters and management had no intent to honour their commitments and all their promises and assurances turned to be false and untrue.
- k. That the complainant, trusting the words and promises of the respondent and its senior management, diligently kept on paying the demands raised from time to time by the respondent in the hope that the said payments from the hard-earned incomes of his are going towards the timely delivery of the said unit. However, all the promises, assurances, and undertakings

of the respondent turned out to be false, misleading, and untrue. That the complainant had made a payment of Rs.90,47,788/-.

- l. That on 09.03.2023, an addendum to the builder buyer agreement dated 14.12.2016 was executed between the complainant and the respondent which consisted of the fact of change in unit number allotted to the complainant from 618 on sixth floor admeasuring 893 sq. ft. to 1619 sq. ft. on Sixteenth Floor admeasuring 893 sq. ft.
- m. That by way of the said Addendum, the amount paid by the complainant to the respondent i.e., Rs.90,47,788/- was adjusted against the newly allotted unit number 1619 and a letter dated 10.03.2023 was issued to the complainant by respondent informing about the change in the unit number from 618 sq. ft. to 1619 sq. ft. and that the other terms and conditions of the builder buyer agreement shall remain valid.
- n. That the relationship between the parties is contractual in nature and is governed by the builder-buyer agreement executed between the parties. The rights and obligations of the parties flow directly from the builder-buyer agreement according to which, the respondent was obligated to complete the construction and development of the said project and to deliver the possession of the said unit and further lease out the same within time as committed to the complainant and contractually undertaken in the agreement and even as otherwise declared and committed to the Authority for registration of the project as on on-going project under the Act. However, the respondent miserably failed to comply with the said obligation, which directly flowed from *Clause 13, subclause 13.4* of the agreement, despite being bound by the terms and conditions of the said agreement.

- o. Since the builder buyer agreement was signed between the parties on 14.12.2016, the due date for offer of possession, as computed from the said date of execution of the builder buyer agreement, comes out to be 14.09.2020. The respondent has evidently delayed the offer of possession as per the committed period / time schedules by approximately 5 years. The respondent has always been vague and ambiguous in updating about the status of development and completion of the project. Admittedly, the respondent is in breach of its contractual obligations and also the provisions of the Act and the rules framed thereunder.
- p. That even after a delay of approximately 5 years in offering the possession of the apartment to the complainant, the respondent has failed in fulfilling its duties as per the terms and conditions of the agreement as well as the provisions of the RERA Act and has failed to offer the possession as well as to execute the conveyance deed in regard to the said apartment.
- q. That the respondent has gravely violated Sections 17 and 18 of the Act. The conduct of non-delivery of valid possession of the said unit by the respondent and non-execution of the conveyance deed within the stipulated time is a sheer default on the part of the respondent.
- r. That the respondent cannot make any precondition for execution of the conveyance deed.
- s. That the complainant had negotiation talks with the respondent as a result of which an opportunity of surrendering the unit was recognized and observed. That the complainant had made a request to the respondent for surrendering the unit and obtaining the refund and compensation for the same due to the delay in possession of the said apartment by the respondent but the surrender had been withdrawn by the complainant as

the compensation which was being offered by the respondent was not at par with the market standards and was causing only a loss to the complainant.

- t. Furthermore, the respondent has failed in complying with all the obligations, not only with respect to the agreement with the complainant but also with respect to the applicable laws, rules, and regulations thereunder and more particularly under the RERA Act. The RERA registration of the said project was valid till 30.06.2020, which is expired as on date and has not been renewed till date, thereby also leading to a violation of Section 4(2)(l)(c) and Section 6 of the Act. The project has been categorized as "lapsed project" under the rules and regulations framed under the Act. The respondent has hence violated Section 11 (4) (b) of the Act.
- u. That with the dream of owning a commercial space to enjoy and reap in the benefits therefrom including but not limited to as one of the sources of income for the complainant from the project which was advertised to be a progressive and aesthetic property, has been crushed by the *malafide* and defaulting conduct of the respondent and the said dream instead has turned into a nightmare causing mental and financial agony to the complainant. The said Unit was booked by the complainant with the hope that he would derive and realize incomes therefrom, which he could utilize during times of need and urgency but the said hope of the complainant has been shattered by the respondent by their unlawful and illegal actions making the complainant run from corner-to-corner for their rightful share.

- v. That the present case is a clear exploitation of innocence and beliefs of the complainant and shows the intent of the respondent to retain the complainant's hard-earned money illegally and enjoy the same, without delivering the said Unit and without further leasing out the same and to continue in breaching the agreed timelines and its obligations under the contract and otherwise under the law.
- w. That the complainant, after the paying and depositing with the respondent, substantial sum of money in the project of the respondent and thereby closing all other options as were available to her, realized that all the assurances and representations made by the respondent are fraudulent and not worth to be relied upon as a willful inordinate delay has been committed by the respondent in handover of the possession of the unit.
- x. That the respondent is a continued defaulter. The respondent has tried to cheat and dupe the innocent and gullible buyers by diverting the money collected from them for their own use or benefit. Not only has the respondent failed to fulfil its obligations as per the agreement signed, the respondent has even charged GST from the complainant @18% which is not at par with the rules and regulations laid down in regard to the same.
- y. That the act and conduct of the respondent are contrary to the settled terms and conditions and the settled law. It is patent from the present facts that there has been a grave default in the timely fulfillment of commitments by the respondent, and the same has been acting contrary to the contractual terms. The complainant strongly opines that the method chosen by the respondent in duping the complainant amounts to unfair

trade practices for which the respondent is liable to be punished in accordance with the law.

- z. That now, being aggrieved by such actions and acts of omissions of the respondent and non-adherence of the respondent to their contractual commitments and obligations, besides their obligations under the law, the inordinate delay in the delivery of the said Unit, the complainant has approached the Authority for effective remedy.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):

- I. Direct the respondent to pay the delayed possession charges to the complainants @ MCLR+2% from the due date of possession till the date of handing over of possession under section 18 of the Act.
- II. Direct the respondent to execute the conveyance deed under section 18 of the Act.
- III. Direct the respondent to refund the excess charges of GST collected from the complainants @18% instead of applicable rate of GST on the sale purchase of the under construction commercial units like service apartments.
- IV. Direct the respondent not to charge any illegal charges, including holding charges or any charged not specifically agreed between the parties at the time of execution of the agreement dated 15.03.2017.
- V. Directed the respondent to not charge the maintenance charges till the handing over of possession to the complainants.
- VI. Direct the respondent to pass on the benefit of the rent benefit gained by the respondents to the complainants.

- VII. To direct the respondent to start the rentals as per the terms of the agreement and the rental pool agreement executed between the parties.
- VIII. To initiate proceedings against the respondent for violating Section 4(2)(I)(c), and Section 6, punishable under Sections 60 and 61 of the Act.
- IX. To grant leave to the complainants to approach the Adjudicating Officer U/S 71 and 72 R/W Section 31 of the Act for various violations of the agreement, and the Act, as committed by the respondent.
- X. Direct the respondent to issue a fresh statement of account after adjustment of the delayed possession charges.
- XI. Directed the respondent to disclose the LOI/ Agreement executed between the rental pool entity and the operator
- XII. Directed the respondent to that any loss incurred by the respondent/ Lemon Tree Hotels/ any other hotel operator shall not be detriment of the complainant and the complainant under no circumstances be asked to make further payment of any cost/ share in losses to the respondent/ Lemon Tree Hotels/ any other hotel operator.
5. The respondent-promoter has failed to file a reply despite several opportunities granted by the authority. It shows that the respondent is intentionally delaying the procedure of the Authority by avoiding filing the written reply. In view of the above, Hence, in view of the same, the Authority has no option but to proceed the ex-parte against the respondent.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- D. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

"Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the objections raised by the respondent.

E. I Objection regarding delay due to force majeure circumstances.

11. The respondent-promoter raised contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic. But all the pleas advanced in this regard are devoid of merit. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 14.03.2021 including grace period of 180 days. Further, quoting HARERA notification no. 9/3-2020 dated 26.05.2020, the respondent requested for an extension of 6 months in lieu of Covid-19. However, it is observed by the Authority that a respondent has already obtained a 6-month extension due to being "unqualified" as per clause 23 of the buyer agreement and is now seeking a second extension based on the COVID-19 pandemic which is unjustified double-benefit. Therefore, any extension in timeframe for handover of possession in lieu of Covid-19 cannot be granted and the due date for handover of possession remains unaltered i.e., 14.03.2021.

F. Findings on the relief sought by the complainant

F.I Direct the respondent to pay the delayed possession charges to the complainants @ MCLR+2% from the due date of possession till the date of handing over of possession under section 18 of the Act.

12. The complainant, vide email dated 29.04.2025, requested refund of the amount deposited along with compensation. In response thereto, the respondent confirmed, vide email of even date, that it would refund a sum of ₹90,47,788/- along with compensation of ₹9,52,212/-, aggregating to a total amount of ₹1,00,00,000/-, within a period of 30 days from the date of submission of the

requisite documents for processing the refund. Subsequently, vide email dated 19.05.2025, the complainant informed the respondent of his decision to continue in the project and requested that his earlier request seeking withdrawal from the project and refund of the deposited amount be treated as withdrawn and disregarded.

13. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to Section 18(1) of the Act which reads as under:-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

14. Clause 13.4 of the buyer's agreement [BBA of another complaint bearing no. CR/3020/2025 titled as ""Rajiv Agarwal and Punam Agarwal Vs. M/s Burman GSC Estate Private Limited" of same project] (in short, the agreement) provides the time period for handing over possession and the same is reproduced below:

"the developer proposes to offer the possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of this agreement. The allottee further agrees and understands that the developer shall additionally be entitled to a period of 180 days, after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the developer"

15. **Due date of handing over possession:** As per clause 13.4 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 45 months from the date of this agreement with a grace period 180 days after the expiry of the said commitment period for

unforeseen delays beyond the reasonable control of the developer. As per possession clause 45 months from date of agreement i.e., 14.12.2016 (date of BBA) comes out to be 14.09.2020 plus grace period of 180 days comes out to be 14.03.2021. Accordingly, the due date of possession comes out to be 14.03.2021 including grace period.

16. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all cases.

18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

19. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.

21. On consideration of the circumstances, the evidence and other records and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 14.03.2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. The occupation certificate has been received by the respondent on 19.11.2024 but no possession of the subject unit offered to the complainant till date. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and

responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 14.03.2021 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.

22. Further, as per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 19.11.2024. There is nothing on record which shows that respondent has offered possession to the complainant till date. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 14.03.2021 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of

interest i.e., 10.80% p.a. w.e.f. 14.03.2021 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.

F.II Direct the respondent to execute the conveyance deed under section 18 of the Act.

24. Under Section-17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

" Section 17 . Transfer of title

- (1) *the promoter shall execute a registered conveyance deedlocal laws: Provided that, in absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate.*

[Emphasis supplied]

25. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 60 days from the date of this order.

F.III Direct the respondent to refund the excess charges of GST collected from the complainants @18% instead of applicable rate of GST on the sale purchase of the under construction commercial units like service apartments.

26. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 14.03.2021 and the incidence of GST came into operation on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date

of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

F.IV Direct the respondent not to charge any illegal charges, including holding charges or any charged not specifically agreed between the parties at the time of execution of the agreement dated 10.02.2017.

F.V Directed the respondent to not charge the maintenance charges till the handing over of possession to the complainants

27. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020. Further, the complainants raised an objection towards the amount raised towards maintenance charges. This issue has already been dealt with by the Authority in complaint bearing no. **4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021**, wherein it was held that the respondent is right in demanding maintenance charges at the rates' prescribed in the buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

F.VI Direct the respondent to pass on the benefit of the rent benefit gained by the respondents to the complainants.

F.VII To direct the Respondent to start the rentals as per the terms of the Agreement and the Rental Pool Agreement executed between the parties

28. In the absence of any rental pool agreement placed on record, this Authority finds that there is no documentary basis to adjudicate upon or grant any reliefs pertaining to rental returns, rental income, or obligations arising therefrom. The complainant has failed to produce any executed agreement or cogent material evidencing the existence, terms, or enforceability of such an arrangement. Consequently, no directions in relation to the alleged rental pool scheme can be issued in the present proceedings. However, the complainant is at liberty to institute a fresh complaint, in accordance with law, specifically seeking reliefs arising out of the Rental Pool Agreement, if so advised and upon production of the requisite supporting documentation.

F.VIII To initiate proceedings against the respondent for violating Section 4(2)(I)(c), and Section 6, punishable under Sections 60 and 61 of the Act

29. The complainant has stated that the registration of the project expired on 30.06.2020 and has not been renewed till date. In this regard, the planning branch of the Authority is directed to take necessary actions against the respondent for not applying for extension of registration/ non submission of CC/OC. A copy of this order be endorsed to the planning branch of the Authority for further action in the matter.

F.IX To grant leave to the complainants to approach the Adjudicating Officer U/S 71 and 72 R/W Section 31 of the Act for various violations of the agreement, and the Act, as committed by the respondent.

30. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of

compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

F.X To direct the respondent to issue a fresh statement of account after adjustment of the delayed possession charge.

31. The complainant took a plea to issue fresh statement of account after adjustment of delay possession charge. The respondent is hereby directed to issue a fresh and updated statement of account in respect of the subject unit, after duly calculating and adjusting the amount payable towards delayed possession charges.

F.XI To direct the Respondent to disclose the LOI/ Agreement executed between the rental pool entity and the operator

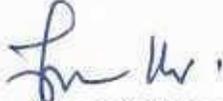
32. The complainant took a plea to disclose the LOI/agreement executed between the rental pool entity and the operator. It is an admitted position that a buyer's agreement and a rental pool agreement have been duly executed between the parties, wherein all the terms and conditions governing the service apartment, including rights, obligations, revenue sharing, management, and operational modalities, have been clearly stipulated. In order to ensure complete transparency and to protect the contractual and financial interests of the complainant, the respondent is directed that if, apart from the said agreements, any other agreement, memorandum of understanding or any form of contractual understanding has been executed involving the complainant, the rental pool entity and/or the operator whether directly or indirectly affecting the complainant's rights, liabilities, revenue entitlement or the operation and management of the unit the respondent shall disclose the same to the complainant.

- F.XII The Respondent be directed that any loss incurred by the Respondent/ Lemon Tree Hotels/ any other hotel operator shall not be detriment of the Complainants and the Complainants under no circumstances be asked to make further payment of any cost/ share in losses to the Respondent/Lemon Tree Hotels/ any other hotel operator.**
33. In the absence of any Rental Pool Agreement placed on record, this Authority finds that there is no documentary basis to adjudicate upon or grant any reliefs pertaining to rental returns, rental income, or obligations arising therefrom. The complainant has failed to produce any executed agreement or cogent material evidencing the existence, terms, or enforceability of such an arrangement. Consequently, no directions in relation to the alleged rental pool scheme can be issued for the same. However, the complainant is at liberty to institute a fresh complaint, in accordance with law, specifically seeking reliefs arising out of the Rental Pool Agreement, if so advised and upon production of the requisite supporting documentation.
- G. Directions of the authority**
34. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
- I. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.80% per annum for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 14.03.2021 till valid offer of possession plus two months, as per Section 18(1) of the Act of read with Rule 15 of the Rules, *ibid.*

- II. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
 - III. The respondent is directed to execute the registered conveyance deed in favour of the complainant within 60 days from the date of this order
 - IV. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
 - VI. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - VII. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
35. The complaints stand disposed of.
36. Files be consigned to registry.



Phool Singh Saini
Member



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.12.2025